

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

TRAVIS BEN MARTIN,

Plaintiff,

v.

JONATHON LAMPSHIRE et al.,

Defendants.

ORDER TO AMEND DEFICIENT THIRD
AMENDED COMPLAINT, &
MEMORANDUM DECISION

Case No. 2:11-CV-335 TC

District Judge Tena Campbell

Plaintiff, Travis Ben Martin, a prisoner at Davis County Jail, filed this *pro se* civil rights suit.¹ Reviewing the **third amended complaint** under § 1915A, the Court has determined that Plaintiff's complaint is deficient as described below.

Deficiencies in Third Amended Complaint

Third Amended Complaint:

- (a) does not state a cause of action against Defendant Jonathon Lampshire. (Note: An amended complaint supersedes any former complaints. Plaintiff cannot simply graft his amended complaint onto former complaint(s).)
- (b) does not address the immunity with which judicial personnel, such as Lynette McKinney, carry out their official duties.
- (c) has claims appearing to be based on conditions of current confinement; however, the complaint was apparently not submitted using the legal help Plaintiff is entitled to by his institution under the Constitution. See *Lewis v. Casey*, 518 U.S. 343, 356 (1996) (requiring prisoners be given "'adequate law libraries or adequate assistance from persons trained in the law' . . . to ensure that inmates . . . have

¹See 42 U.S.C.S. § 1983 (2012).

a reasonably adequate opportunity to file nonfrivolous legal claims challenging their convictions or conditions of confinement") (quoting *Bounds v. Smith*, 430 U.S. 817, 828 (1977) (emphasis added)).

Repeated and Final Instructions to Plaintiff

Under Rule 8 of the Federal Rules of Civil Procedure a complaint must contain "(1) a short and plain statement of the grounds upon which the court's jurisdiction depends, . . . (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief the pleader seeks."² Rule 8(a)'s requirements are meant to guarantee "that defendants enjoy fair notice of what the claims against them are and the grounds upon which they rest."³

Pro se litigants are not excused from compliance with the minimal pleading requirements of Rule 8. "This is so because a pro se plaintiff requires no special legal training to recount the facts surrounding his alleged injury, and he must provide such facts if the court is to determine whether he makes out a claim on which relief can be granted."⁴ Moreover, "it is not the proper function of the Court to assume the role of advocate for a

²Fed. R. Civ. P. 8(a).

³*TV Commc'ns Network, Inc. v. ESPN, Inc.*, 767 F. Supp. 1062, 1069 (D. Colo. 1991), *aff'd*, 964 F.2d 1022 (10th Cir. 1992).

⁴*Hall v. Bellmon*, 935 F.2d 1106, 1009 (10th Cir. 1991).

pro se litigant."⁵ Thus, the Court cannot "supply additional facts, [or] construct a legal theory for plaintiff that assumes facts that have not been pleaded."⁶

Plaintiff should consider these points when refiling his complaint. First, the revised complaint must stand entirely on its own and shall not refer to, or incorporate by reference, any portion of the original complaint or supplement.⁷ Second, the complaint must clearly state what each individual defendant did to violate Plaintiff's civil rights.⁸ "To state a claim, a complaint must 'make clear exactly *who* is alleged to have done *what* to *whom*.'"⁹ Third, Plaintiff cannot name someone as a defendant based solely on his or her supervisory position.¹⁰ And, fourth, Plaintiff is warned that litigants who have had three *in forma pauperis* cases dismissed as frivolous or meritless

⁵*Id.* at 1110.

⁶*Dunn v. White*, 880 F.2d 1188, 1197 (10th Cir. 1989).

⁷*See Murray v. Archambo*, 132 F.3d 609, 612 (10th Cir. 1998) (stating amended complaint supercedes original).

⁸*See Bennett v. Passic*, 545 F.2d 1260, 1262-63 (10th Cir. 1976) (stating personal participation of each named defendant is essential allegation in civil rights action).

⁹*Stone v. Albert*, No. 08-2222, slip op. at 4 (10th Cir. July 20, 2009) (unpublished) (emphasis in original) (quoting *Robbins v. Oklahoma*, 519 F.3d 1242, 1250 (10th Cir. 2008)).

¹⁰*See Mitchell v. Maynard*, 80 F.3d 1433, 1441 (10th Cir. 1996) (stating supervisory status alone is insufficient to support liability under § 1983).

will be restricted from filing future lawsuits without prepaying fees.

ORDER

IT IS HEREBY ORDERED that:

(1) Plaintiff shall have a **FINAL** thirty days from the date of this order to cure the deficiencies noted above.

(2) the Clerk's Office shall mail Plaintiff a copy of the Pro Se Litigant Guide.

(3) if Plaintiff fails to timely cure the above deficiencies according to the instructions here this action will be dismissed without further notice.

DATED this 19th day of October, 2012.

BY THE COURT:



JUDGE TENA CAMPBELL
United States District Court